INDEX

CITATIONS

460-099—72

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70–74

PIPEFITTERS LOCAL UNION NO. 562 ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES

After hearing oral argument in this case the Court has requested the parties to file supplemental briefs addressed to the following question:

> Does § 205 of the Federal Election Campaign Act of 1971 (P.L. 92–225) affect the decision in this case, and, if so, with what result? More particularly, does § 205 effect a substantive change in 18 U.S.C. 610 in any way material to this case, as for example, by altering any of the attributes of permissible union political organizations, such as the method of organization or administration or the method of solicitation or collection of contributions? If so, must this prosecution abate under the doctrine of *United States* v. *The Schooner Peggy,* 1 Cranch 103, and its progeny? Or does the federal saving statute, 1 U.S.C. 109, nullify any abatement of the prosecution? In answering the latter ques-

tion, what effect should be given to *Hamm* v. *City of Rock Hill*, 379 U.S. 306?

The statute, 18 U.S.C. 610, as originally enacted and as amended makes it unlawful for any labor organization or corporation to make a "contribution" or "expenditure" in connection with a federal election. The statute did not as originally enacted define the scope and meaning of either "contribution" or "expenditure." While the instant case was pending in this Court, Congress, in Section 205 of the Federal Election Campaign Act of 1971, amended 18 U.S.C. 610 to define "contribution" and "expenditure." The amendment, so far as pertinent, provides:

> As used in this section, the phrase contribution or expenditure * * * shall not include * * * the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: Provided, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

We submit, that, as Congressman Hansen, the sponsor of the amendment, stated, and as petitioners them-

selves have asserted (Pet. Supp. Memorandum p. 3), the purpose and effect of the amendment "is to codify and clarify the existing law and not to make any substantive changes in the law" (118 Cong. Rec. H 94 (Daily ed., Jan. 19, 1972)). It is our position that, on the theory on which this case was presented to the jury, a violation was established under the statute both as originally enacted and as amended.

I

THE NEW AMENDMENT MAKES NO SUBSTANTIVE CHANGE IN SECTION 610 MATERIAL TO THIS CASE

The new amendment makes clear: (1) that unions may establish, administer and solicit contributions to a "separate segregated fund to be utilized for political purposes" and (2) that such a fund is within the prohibition of the statute if the money therefor is "secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or a condition of employment." The amendment does not speak in any way to Section 610's prohibition of political contributions by a union out of general union funds—the prohibition on which the present prosecution was based. The amendment, insofar as is here relevant, is concerned only with the statute's limitations on union solicitation and administration of a "separate segregated fund to be utilized for political purposes," but the entire theory on which the present prosecution was based and submitted to

the jury was that the Fund involved here was not such a fund but was, instead, a mere artifice or device by which general union monies were contributed to political campaigns.

Thus, we submit, the charge of the indictment and the facts established at the trial in this case show a violation of the statute both as originally enacted and as amended. As stated in the government's brief (p. 23), the "essential charge of the indictment and the theory on which the case was tried [and submitted to the jury] was that the [Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense] Fund, although formally set up as an entity independent of Local 562, was in fact a union fund, controlled by the union, contributions to which were assessed by the union as part of its dues structure, collected from non-members in lieu of dues, and expended, when deemed necessary, for union purposes and the personal use of the directors of the Fund." The trial court instructed the jury that the statute "does not prohibit any person from making or agreeing to make such [political] contributions or setting up an independent fund for such purpose separate and distinct from union funds either alone or in conjunction with others, simply because such person happens to be a member of a labor organization." The trial judge also instructed the jury to take into consideration a number of factors in deciding whether the Fund was an independent fund or in reality merely a part of the union's general funds. Among these were the regularity of payments, the method of collection, whether or not contributions to the fund were required

as a condition of employment, the voluntariness of the payments, and the uses made of the Fund (see Govt. Br. 16–20, 23–24).

In short, the case was tried on the theory that the fund here involved was *not* the kind of a fund which the amended statute permits but was the kind of a fund which was and still is a violation of Section 610—a fund which, while ostensibly separate, was in fact a union fund, supported by money collected as union money and used, when deemed desirable, as general union funds.

The issue which the amendment, insofar as relevant here, was designed to clarify was whether a separate segregated fund to receive political contributions had to be administered outside the union organization or whether a truly separate fund was outside the scope of the statute even if administered by the union. On this the government's view was clear before the amendment. We stated (Govt. Br. 27, note 7):

> It is still petitioners' assertion that the Fund was a separate organization similar to the old C.I.O.–P.A.C. and the present COPE, and countless other independent political committees supported by voluntary labor contributions (See, Pet. Br. 92). If that were all the evidence established here, we would agree that the government failed to make its case. Nor do we dispute appellants' conclusion, following their review of the legislative history of Section 610, that a union could "establish a political organization for the purpose of receiving ear-marked political monies directly from union members * * *" (Pet. Br. 62). Our point is that that is precisely what Local 562 did not do in this case.

Our position always has been and remains that what the jury had to find in order to convict Local 562 in this case, under the court's charge, was that the political fund here was in actuality a general union fund, the moneys of which could not lawfully be expended for political purposes before or after the amendment.

Congress so recognized in enacting the amendment here at issue. Congressman Hansen, the sponsor of the amendment, in addition to saying that the purpose and effect of his amendment "is to codify and clarify the existing law and not to make any substantive changes in the law" (118 Cong. Rec. H 94 (Daily ed., Jan. 19, 1972)), specifically stated that the amendment would have no effect on this very case *id.* at H 95):

> The Hansen amendment is completely consistent with the basic theory of the Government's prosecution in United States against Pipefitters Local 562—United States Supreme Court No. 70–74 October Term, 1971—as stated in the Solicitor General's brief filed with the Court in November 1971. * * *

Congressman Hansen then quoted the passage from page 23 of the government's principal brief, showing that the government's theory was that the fund in the instant case "was in fact a union fund, controlled by the union, contributions to which were assessed by the union as part of its dues structure."

The legislative history thus supports our position that the amendment made no substantive change in any way material to this case. The question of abatement, therefore, does not arise.

II

EVEN IF IT WERE ASSUMED ARGUENDO THAT THE AMENDMENT MATERIALLY CHANGES SECTION 610, ABATEMENT OF THIS PROSECUTION WOULD BE IMPROPER

Even if it were assumed, contrary to our submission in Point I, *supra,* that Section 205 does change 18 U.S.C. 610 in a way material to this case, abatement would be improper here. Whether a change in the law abates a pending prosecution depends upon the legislative intention when making the change. See *Hamm* v. *City of Rock Hill,* 379 U.S. 306, 313–316. Here there is no problem of inferring legislative intent because Congress clearly expressed its intention that pending prosecutions should not abate. Congressman Hansen, arguing in favor of the amendment to Section 610, specifically referred to the only pending cases against labor unions which the amendment could conceivably affect[1] and specifically denied that the

[1] Significantly, this is not an area of law in which there might have been numerous pending prosecutions unknown to the legislative sponsors of the amendment. The only pending case involving a labor union not specifically mentioned by Congressman Hansen in the floor debate is *United States* v. *W. A. Boyle, et al.,* 1741–71 (D. D.C.) (indictment pending). The indictment in that case charges a political expenditure directly from the union's treasury—conduct which clearly violates Section 610, and as to which the amendment could have no conceivable relevance.

Five prosecutions against national banks for loans to political candidates have been terminated as a result of other provisions of the amendment. In four, an appeal by the United States from the dismissal of the indictments has been withdrawn, and in the fifth the United States Attorney has been directed to file a *nolle prosequi* motion requesting dismissal of the indictment. Prosecutorial discretion has been used to terminate

amendment "has the purpose and effect of thwarting [these] present prosecutions" (118 Cong. Rec. H 94 (Daily ed., Jan. 19, 1972)).

Moreover, even in the absence of this specific expression of the legislative intent, and still assuming *arguendo* that the amendment materially changes Section 610 for present purposes, 1 U.S.C. 109, the federal savings statute, would keep this prosecution from abating. Section 109 provides in part:

> The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. * * *

This statute reverses the common law rule that a statutory change making lawful conduct which was previously criminal abates prosecutions for such conduct committed prior to the change in the statute. *United States* v. *Reisinger*, 128 U.S. 398; *Hamm* v. *City of Rock Hill*, *supra*, 379 U.S. at 314. Thus, under 1 U.S.C. 109 this prosecution is saved [2] even if

---

these cases because the conduct charged is now clearly lawful under the amended Section 610. The legislative history evinces no congressional intent to save those prosecutions. Thus, whether or not the amendment with respect to bank loans would have been viewed as abating those prosecutions, no such result should follow with respect to the pending labor union cases where the congressional history expressly stated an intent that they should go forward.

[2] 1 U.S.C. 109 applies to save prosecutions under statutes changed by amendment as well as those nullified by repeal. *Moorehead* v. *Hunter*, 198 F. 2d 52 (C.A. 10).

the amendment to Section 610 could be viewed as making no longer unlawful the previously criminal conduct of these defendants. This result is not affected by this Court's decisions in *Hamm* v. *City of Rock Hill*, 379 U.S. 306, and *Bell* v. *Maryland*, 378 U.S. 226. In *Hamm* v. *City of Rock Hill*, *supra*, 379 U.S. at 314, this Court observed that 1 U.S.C. 109 "was meant to obviate mere technical abatement" which common law inferred from repeal of a criminal statute (see *United States* v. *The Schooner Peggy*, 1 Cranch 103; *United States* v. *Tynen*, 11 Wall. 88). However, in *Hamm*, *supra*, the Court distinguished the impact of the Civil Rights Act of 1964 from "amendment and repeal" of a criminal statute as follows (379 U.S. at 314):

> In contrast, the Civil Rights Act works no such technical abatement. It substitutes a right for a crime. So drastic a change is well beyond the narrow language of amendment and repeal. * * *

Here, at most there is a technical amendment of the statute. Hence, even if, contrary to our submission, that amendment were construed to remove the defendants' conduct from the statute's proscription, the prosecution is nonetheless saved by 1 U.S.C. 109, as well as by the legislative intent specifically stated by the sponsor of the instant amendment.

CONCLUSION

For the reasons stated herein, as well as in our principal brief and oral argument, the judgments below should be affirmed.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
HENRY E. PETERSEN,
Assistant Attorney General.
LAWRENCE G. WALLACE,
Deputy Solicitor General.
ALLAN A. TUTTLE,
Assistant to the Solicitor General.
BEATRICE ROSENBERG,
Attorney.

MARCH 1972.

U.S. GOVERNMENT PRINTING OFFICE: 1972

(Slip Opinion)

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PIPEFITTERS LOCAL UNION NO. 562 ET AL. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 70–74. Argued January 11, 1972—Decided June 22, 1972

Petitioner union and three of its officers were convicted of conspiracy to violate 18 U. S. C. § 610, which prohibited a labor organization from making a contribution or an expenditure in connection with a federal election. Evidence indicated that the union from 1949 through 1962 maintained a political fund to which union members and others working under the union's jurisdiction were required to contribute and that that fund was then succeeded by the present fund, which was, in form, set up as a separate "voluntary" organization; union officials, nevertheless, retained unlimited control over the fund, and no significant change was made in the regular and systematic collection of contributions at a prescribed rate based on hours worked; union agents, moreover, continued to collect donations at jobsites on union time, and the proceeds were used for a variety of purposes, including political contributions in connection with federal elections; those contributions, on the other hand, were made from accounts strictly segregated from union dues and assessments, and although some of the contributors believed otherwise, donations to the fund were not, in fact, necessary for employment or union membership. Under instructions to determine whether the fund was in reality a union fund or the contributors' fund, the jury found each defendant guilty. The Court of Appeals rejected petitioners' challenges, and held that the fund was a subterfuge through which the union made political contributions of union monies in violation of § 610. The Federal Election Campaign Act of 1971, which became effective after oral argument here, added a paragraph at the end of § 610 that expressly authorizes labor organizations to establish, administer, and solicit contributions for political funds, provided

Syllabus

that the fund not make a contribution or expenditure in connection with a federal election by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat thereof, or by monies required as a condition of employment or union membership. *Held:*

1. Section 610, as confirmed by the Federal Election Campaign Act, does not apply to contributions or expenditures from voluntarily financed union political funds. A legitimate political fund must be separate from the sponsoring union only in the sense that there must be a strict segregation of its monies from union dues and assessments, and solicitation by union officials, although permissible, must be conducted under circumstances plainly indicating that donations are for a political purpose and that those solicited may decline to contribute without reprisal. Pp. 15–42.

2. Section 610 may be interpreted to prohibit the use of general union monies for the establishment, administration, or solicitation of contributions for union political funds. By clearly permitting such use, the Federal Election Campaign Act may, therefore, have impliedly repealed § 610. Pp. 42–46.

3. Even if there has been such an implied repeal, it, nevertheless, does not require abatement of the prosecution against petitioners because of the federal saving statute, 1 U. S. C. § 109. *United States* v. *Reisinger*, 128 U. S. 398, followed. *Hamm* v. *Rock Hill*, 379 U. S. 306, distinguished. Pp. 46–49.

4. The instructions to the jury were clearly erroneous because they permitted the jury to convict without finding that donations to the fund had been actual or effective dues or assessments. The sufficiency of the indictment is left open for determination on remand. Pp. 49–56.

434 F. 2d 1127, vacated and remanded to the District Court with instructions to dismiss indictment against petitioners Callanan and Lawler, both now deceased, and reversed and remanded to the District Court as to remaining petitioners.

BRENNAN, J., delivered the opinion of the Court, in which DOUGLAS, STEWART, WHITE, MARSHALL, and REHNQUIST, JJ., joined. POWELL, J., filed a dissenting opinion, in which BURGER, C. J., joined. BLACKMUN, J., took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 70–74

Pipefitters Local Union No. 562 et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June 22, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioners—Pipefitters Local Union No. 562 and three individual officers of the Union—were convicted by a jury in the United States District Court for the Eastern District of Missouri of conspiracy under 18 U. S. C. § 371 to violate 18 U. S. C. § 610. At the time of trial § 610 provided in relevant part:

> "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in . . . Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . . .
>
> "Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization; as the case may be, . . . in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or

both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

"For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist [*sic*] for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." [1]

The indictment charged, in essence, that petitioners had conspired from 1963 to May 9, 1968, to establish and maintain a fund that (1) would receive regular and systematic payments from Local 562 members and members of other locals working under the Union's jurisdiction; (2) would have the appearance, but not the reality of being an entity separate from the Union; and (3) would conceal contributions and expenditures by the Union in connection with federal elections in violation of § 610.[2]

---

[1] Section 371, in turn, provided:

"If two or more persons conspire . . . to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

[2] Omitting the overt acts charged, the indictment, filed May 9, 1968, stated in relevant part:

"The Grand Jury charges:

"1. That at all times hereinafter mentioned defendant Pipefitters Local Union No. 562, St. Louis, Missouri (hereinafter referred to as Local 562), affiliated with the United Association of Journeymen

The evidence tended to show, in addition to disbursements of about $150,000 by the fund to candidates in federal elections, an identity between the fund and the

---

and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL–CIO (hereinafter referred to as the United Association), was a labor organization within the meaning of Section 610 of Title 18, United States Code, that is to say, an organization in which employees participated and which existed, in part, for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

. . . . . .

"3. That from on or about October 12, 1966, up to and including the date of the filing of this indictment, defendant Lawrence L. Callanan was an officer of defendant Local 562.

"4. That at all times hereinafter mentioned defendant John L. Lawler was an officer of defendant Local 562.

"5. That at all times hereinafter mentioned, defendant George Seaton was an officer of defendant Local 562.

. . . . . .

"7. That at all times hereinafter mentioned, the Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund (hereinafter the Fund), was a fund of defendant Local 562, established, maintained, and administered by officers, employees, members, agents, foremen and job stewards of defendant Local 562, to effect a regular and systematic collection, receipt, and expenditure of moneys obtained from working members of defendant Local 562 and from working members of other labor organizations employed under the jurisdiction of defendant Local 562.

. . . . . .

"9. That from in or about 1963 and continuously thereafter up to and including the date of the filing of this indictment, in the City of St. Louis, in the Eastern District of Missouri and elsewhere, Local 562, Lawrence L. Callanan, John L. Lawler and George Seaton, the defendants herein, and John F. Burke and Edward J. Steska, named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did conspire and agree with each other and with divers other persons to the grand jurors unknown, to violate Section 610 of Title 18, United States Code in that they did unlawfully, wilfully, and knowingly conspire

Union and a collection of well over $1 million in contributions to the fund by a method similar to that employed in the collection of dues or assesments. In par-

---

and agree to have Local 562 make contributions and expenditures in connection with elections at which Presidential and Vice Presidential electors or United States Senators and Representatives to Congress were to be voted for, and to wilfully consent to the making of such contributions and expenditures by Local 562.

"10. It was a part of said conspiracy that the defendants and co-conspirators would establish and maintain a special fund entitled 'Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund,' which fund would have the appearance of being a wholly independent entity, separate and apart from Local 562; and that the defendants and co-conspirators would thereby conceal the fact that Local 562 would make contributions and expenditures in connection with elections at which Presidential and Vice Presidential electors or United States Senators and Representatives to Congress were to be voted for.

"11. It was further a part of the conspiracy that defendant John L. Lawler would be Director of the Fund and that at a certain time he would be succeeded as Director of the Fund by defendant Lawrence L. Callanan; and that the Director of the Fund would appear to have control and management of the Fund, including the receipt and disbursement of money and the keeping of its books.

"12. It was further a part of the conspiracy that defendants John L. Lawler and Lawrence L. Callanan would not have the books of the Fund audited, or afford members of defendant Local 562 and other pipefitters contributing to the Fund any accounting for the money on hand, paid into or disbursed from the Fund.

"13. It was further a part of the conspiracy that the defendants and co-conspirators, by means of the creation and operation of the Fund, would continue in new form the practice of collecting for political purposes One Dollar ($1.00) per day worked from members of defendant Local 562 and Two Dollars ($2.00) per day worked from non-member pipefitters employed on jobs within the jurisdiction of defendant Local 562.

"14. It was further a part of the conspiracy that the defendants and co-conspirators would waive and fail to enforce Section 180 of the Constitution of the United Association in order to facilitate the payment of monies into the Fund, by failing to collect from

ticular, it was established that from 1949 through 1962 the Union maintained a political fund to which Union members and others working under the Union's jurisdiction were in fact required to contribute and that that

---

non-members of Local 562, working under its jurisdiction, a required travel card fee of not in excess of Eight Dollars ($8.00) per month, and in lieu thereof, collecting payments to the Fund at the rate of Two Dollars ($2.00) per eight-hour working day from such non-members.

"15. It was further a part of the conspiracy that the defendants and co-conspirators would cause general foremen, area foremen, job stewards, officers, agents, employees and other members of Local 562 acting in a supervisory capacity over members and pipefitters working on jobs under the jurisdiction of Local 562, to become agents of the Fund in order to facilitate the collection of monies for the Fund on a regular basis on job sites and at the headquarters of Local 562, 1242 Pierce Avenue, St. Louis, Missouri.

"16. It was further a part of the conspiracy that the defendants and co-conspirators, in order to facilitate an orderly, regular and systematic collection of contributions to the Fund, would cause the agents of the Fund, referred to in paragraph 15 of this Indictment to distribute to the pipefitters working at all job sites contribution agreement cards to be signed by such pipefitters, and to distribute to foremen and job stewards at such job sites printed collection sheets for the Fund upon which to record the number of hours worked by such pipefitters and the amount of the contributions paid by each into the Fund; and that such foremen or job stewards would advise newly employed pipefitters at such job sites of the existence of the Fund and of the rates of participation, that is, for members of Local 562, One Dollar ($1.00) per eight hours worked; and after January 1, 1965, Fifty Cents ($.50) per eight hours worked, and for members of other pipefitter locals Two Dollars ($2.00) per eight hours worked.

"17. It was further a part of the conspiracy that defendant Local 562 would make substantial contributions in connection with the 1964 General Election and the 1966 General Election and that defendants Lawrence L. Callanan and John L. Lawler would consent to such contributions by issuing checks drawn upon the account of the Fund in the approximate total amount of One Hundred Fifty Thousand Dollars ($150,000)."